

**REMARKS**

Applicants note that the Amendment filed January 16, 2004 has been entered.

Claims 60-77 were pending in the above-referenced application.

**I. Amendments to the Claims**

Claim 65 has been amended. Support for the amendment can be found, for example, in previous claim 66.

Claim 66 has been cancelled without prejudice or disclaimer of the subject matter recited therein.

Accordingly, claims 60-65 and 67-77 are currently pending in this application.

**II. Rejections under 35 U.S.C. § 103**

Applicants acknowledge that the previous rejection of the claims under 35 U.S.C. § 103, for allegedly being unpatentable over Ledbetter et al. (EP0440373) in view of Ledbetter et al. (U.S. Patent No. 6,010,902) and Chang (U.S. Patent No. 6,129,916) (Office Action, page 2, section 2) has been withdrawn by the Examiner because the amended claims are drawn to methods which employ the use of anti-CD3 and anti-CD28 antibodies which are covalently attached to the same surface to induce the population of T cells to proliferate to sufficient numbers for use in therapy (Office Action, page 2, section 2).

**III. Rejections under 35 U.S. C. § 112, first paragraph**

Claim 65 stands rejected under 35 U.S.C. § 112, first paragraph, for allegedly not providing enablement for determining the level of expression of any cell surface molecule (Office Action, page 2, section 4).

Claim 65 also stands rejected under 35 U.S.C. § 112, first paragraph, for allegedly not containing a written description of the genus of cell surface molecules set forth in claim 65 (Office Action, page 3, section 5).

The Examiner invited the Applicants to limit the invention to B7-1 and B7-2 as set forth in claim 66 to obviate this rejection (Office Action, page 5, fourth paragraph).

Without acquiescing to the propriety of these rejections, and solely to expedite prosecution of the instant Application, Applicants have amended claim 65, by incorporating the limitations of claim 66, in line with the Examiner's suggestion.

Applicants aver that these rejections under 35 U.S.C. § 112, first paragraph (enablement and written description) have been rendered moot. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw these rejections.

#### **IV. Rejections under the doctrine of obviousness-type double patenting**

Claims 60-77 remain rejected under the doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,352,694 (Office Action, page 5, section 7), and over claims 1-29 of U.S. Patent No. 6,534,055 (Office Action, page 5, section 7).

Without acquiescing to the propriety of these rejections, and solely with the intent to expedite prosecution of the instant Application, Applicants submit herewith a Terminal Disclaimer over U.S. Patent No. 6,352,694 and U.S. Patent No. 6,534,055 (Appendix A), in compliance with 37 C.F.R. § 1.321, to obviate the rejections under the doctrine of obviousness-type double patenting.

Accordingly, the Examiner is respectfully requested to reconsider the application in light of the above, and withdraw the rejections under the doctrine of obviousness-type double patenting.

**V. Provisional Rejections under the doctrine of obviousness-type double patenting**

Claims 60-77 remain provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copending claims of USSN 08/253,964, USSN 08/592,711, USSN 09/349,915; and USSN 09/553,865 (Office Action, page 5, section 6).

Applicants note that the Examiner has withdrawn the previous provisional rejection under the doctrine of obviousness type double patenting over USSN 09/183,055, because the claims of USSN 09/183,055 are patentably distinct as they include anti-CD9 antibodies to stimulate CD8<sup>+</sup> T cells.

The Examiner is requested to clarify the reason for imposing a provisional rejection of the instant application over co-pending USSN 09/553,865. The instant application relates to methods for inducing *ex vivo* proliferation of a population of T cells to sufficient numbers for use in therapy, whereas the claims of USSN 09/553,865 are directed to compositions of matter. Applicants respectfully request that the provisional obviousness-type double patenting rejection in the instant application over USSN 09/553,865 be reconsidered and withdrawn.

Upon entry of the instant amendment, the provisional double patenting rejections will be the only remaining rejections in the instant application. Thus, the Examiner is respectfully requested, in accordance with MPEP § 804, to withdraw the provisional obviousness type double patenting rejections in the instant application and permit the instant application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other applications into a double patenting rejection at the time the instant application issues as a patent.

**VI. Request to Examiner**

The Examiner is respectfully requested to clarify for Applicants whether a dependent claim of claim 62 reciting that the anti-human CD28 monoclonal antibody is 9.3 (ATCC No. HB10271) would be allowable.

Applicants have contacted the ATCC to determine whether the 9.3 antibody (ATCC No. HB 10271) was publicly available. Ms. Tanya Nunnally, a Patent Specialist at the ATCC, stated that HB-10271 has been released for distribution and is available for order from the ATCC Customer Service Department at 1-800-638-6597 (*see, Appendix C*).

Accordingly, Applicants respectfully contend that they should be entitled to claim a method of claim 60, wherein the anti-CD28 antibody is the 9.3 antibody (ATCC No. HB-10271).



Appl. No. 09/350,202  
Am dt. dated July 27, 2004  
Reply to Office Action of April 13, 2004

## APPENDIX B

Copy of Correspondence with Ms. Tanya Nunnally at the ATCC regarding the availability of the 9.3 antibody (ATCC No. HB-10271).

**VII. Conclusion**

Applicants believe that all of the outstanding rejections of record have been overcome by amendment and/or argument. Accordingly, the claims are now believed to be in condition for allowance. Applicants respectfully request that the Examiner issue a timely Notice of Allowance.

Applicants petition for a one-month extension of time to respond to the Office Action dated 04/13/2004. Please charge the requisite fee to our Deposit Account No. 08-0219. No additional fees are believed to be due in connection with this correspondence. However, if any fees are due, please charge any payments due, or credit any overpayments, to our Deposit Account No. 08-0219.

The Examiner is invited to telephone the undersigned at the telephone number given below in order to expedite the prosecution of the instant application.

Respectfully submitted,

Dated: July 27, 2004

  
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**APPENDIX A**

Terminal Disclaimer over U.S. Patent No. 6,352,694 and U.S. Patent No. 6,534,055